

House Study Bill 655

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON DRAKE)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to setback distance requirements that apply to
2 residences which are constructed in proximity to animal
3 feeding operation structures and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 6302YC 80
6 da/gg/14

PAG LIN

1 1 Section 1. NEW SECTION. 335.26 RURAL RESIDENCES ==
1 2 SETBACK DISTANCES FROM ANIMAL FEEDING OPERATIONS.
1 3 1. As used in this section:
1 4 a. "Animal feeding operation" means a confinement feeding
1 5 operation or open feedlot as defined in section 459.102, and
1 6 includes but is not limited to an animal feeding operation
1 7 structure, a settled open feedlot effluent basin or settled
1 8 open feedlot effluent treatment area, all as defined in
1 9 section 459.102, or other compost or manure storage area.
1 10 b. "Construct" includes relocating or erecting a building,
1 11 excavating for a basement, installing footings for a building,
1 12 or expanding an existing building. It does not include the
1 13 repair, maintenance, or renovation of an existing building.
1 14 c. "Rural residence" means a house, multifamily dwelling,
1 15 or other building, including any structure attached to the
1 16 building, which is located outside the incorporated limits of
1 17 a city and is used as a place of habitation for humans on a
1 18 permanent and frequent basis.
1 19 2. A rural residence constructed on or after July 1, 2004,
1 20 shall be located a minimum of three thousand feet from an
1 21 animal feeding operation. A person shall not construct a
1 22 rural residence in violation of this setback distance on or
1 23 after July 1, 2004. The setback distance between the rural
1 24 residence and an animal feeding operation shall be measured in
1 25 feet from their closest points. However, this subsection
1 26 shall not apply to the construction of a rural residence if
1 27 any of the following applies:
1 28 a. The titleholder of the land where the rural residence
1 29 is to be constructed or has been constructed is also the owner
1 30 of the animal feeding operation from which the setback
1 31 distance is required.
1 32 b. A written waiver is executed between the titleholder of
1 33 the land where the rural residence is to be constructed or has
1 34 been constructed and the titleholder of the land where the
1 35 animal feeding operation is located. The rural residence
2 1 shall be constructed under such terms and conditions that the
2 2 parties negotiate. A written waiver under this paragraph
2 3 becomes effective only upon the recording of the waiver in the
2 4 office of the recorder of the county in which the land on
2 5 which the rural residence is to be constructed or has been
2 6 constructed is located.
2 7 3. Notwithstanding any provision in this chapter to the
2 8 contrary, the county government in the county where a rural
2 9 residence may be constructed or has been constructed shall
2 10 enforce the provisions of this section.
2 11 a. The county government shall bring an action in district
2 12 court for an injunction to restrain a person from violating
2 13 this section. The county government shall not be required to
2 14 post a bond.
2 15 b. The county government shall not provide for a variance
2 16 or waiver other than as provided in this section. The
2 17 provisions of this section shall apply regardless of whether
2 18 the county board of supervisors has adopted a zoning ordinance
2 19 pursuant to this chapter or whether the animal feeding
2 20 operation benefiting from the setback distance is located in
2 21 that county.

2 22 c. If a county board of supervisors has not adopted an
2 23 ordinance pursuant to this chapter, or has adopted an
2 24 ordinance pursuant to this chapter that does not include a
2 25 setback distance as required in this section, the county
2 26 government shall impose, assess, and collect a civil penalty
2 27 as if it were a county infraction under chapter 331. Each day
2 28 that a rural residence is constructed or located in violation
2 29 of this section constitutes a separate violation.

2 30 Sec. 2. NEW SECTION. 414.27 RESIDENCES == SETBACK
2 31 DISTANCES FROM ANIMAL FEEDING OPERATIONS.

2 32 1. As used in this section:

2 33 a. "Animal feeding operation" means a confinement feeding
2 34 operation or open feedlot as defined in section 459.102, and
2 35 includes but is not limited to an animal feeding operation
3 1 structure, a settled open feedlot effluent basin or settled
3 2 open feedlot effluent treatment area, all as defined in
3 3 section 459.102, or other compost or manure storage area.

3 4 b. "Construct" includes relocating or erecting a building,
3 5 excavating for a basement, installing footings for a building,
3 6 or expanding an existing building. It does not include the
3 7 repair, maintenance, or renovation of an existing building.

3 8 c. "Residence" means a house, multifamily dwelling, or
3 9 other building, including any structure attached to the
3 10 building, which is located inside the incorporated limits of a
3 11 city or within the extended zoning jurisdiction of a city as
3 12 provided in section 414.23, and which is used as a place of
3 13 habitation for humans on a permanent and frequent basis.

3 14 2. A residence constructed on or after July 1, 2004, shall
3 15 be located a minimum of three thousand feet from an animal
3 16 feeding operation. A person shall not construct a residence
3 17 in violation of this setback distance on or after July 1,
3 18 2004. The setback distance between the residence and an
3 19 animal feeding operation shall be measured in feet from their
3 20 closest points. However, this subsection shall not apply to
3 21 the construction of a residence if any of the following
3 22 applies:

3 23 a. The titleholder of the land where the residence is to
3 24 be constructed or has been constructed is also the owner of
3 25 the animal feeding operation from which the setback distance
3 26 is required.

3 27 b. A written waiver is executed between the titleholder of
3 28 the land where the residence is to be constructed or has been
3 29 constructed and the titleholder of the land where the animal
3 30 feeding operation is located. The residence shall be
3 31 constructed under such terms and conditions that the parties
3 32 negotiate. A written waiver under this paragraph becomes
3 33 effective only upon the recording of the waiver in the office
3 34 of the recorder of the county in which the land on which the
3 35 residence is to be constructed or has been constructed is
4 1 located.

4 2 3. Notwithstanding any provision in this chapter to the
4 3 contrary, the city government in the city where a residence
4 4 may be constructed or has been constructed shall enforce the
4 5 provisions of this section.

4 6 a. The city government shall bring an action in district
4 7 court for an injunction to restrain a person from violating
4 8 this section. The city government shall not be required to
4 9 post a bond.

4 10 b. The city government shall not provide for a variance or
4 11 waiver other than as provided in this section. The provisions
4 12 of this section shall apply regardless of whether the city
4 13 government has adopted a zoning ordinance pursuant to this
4 14 chapter or whether the animal feeding operation benefiting
4 15 from the setback distance is located in that city.

4 16 c. If a city government has not adopted an ordinance
4 17 pursuant to this chapter, or has adopted an ordinance pursuant
4 18 to this chapter that does not include a setback distance as
4 19 required in this section, the city government shall impose,
4 20 assess, and collect a civil penalty as if it were a municipal
4 21 infraction under chapter 364. Each day that a residence is
4 22 constructed or located in violation of this section
4 23 constitutes a separate violation.

4 24 Sec. 3. IMPLEMENTATION OF ACT. Section 25B.2, subsection
4 25 3, shall not apply to this Act.

4 26 EXPLANATION

4 27 This bill prohibits a person from constructing or expanding
4 28 a residence that is closer than 3,000 feet from an animal
4 29 feeding operation (a confinement feeding operation or open
4 30 feedlot). The bill's prohibition applies to a rural residence
4 31 located outside the corporate limits of a city and to a
4 32 residence located within the corporate limits of a city. The

4 33 bill also creates several exceptions, including for a
4 34 residence belonging to the owner of the animal feeding
4 35 operation or if a written waiver is executed by the
5 1 titleholder of the land where the animal feeding operation is
5 2 located.

5 3 The bill provides that a county or city government is
5 4 responsible for the enforcement of the bill's provisions,
5 5 regardless of whether the county or city has adopted a zoning
5 6 ordinance. The county or city must bring an action for
5 7 injunctive relief and is prohibited from granting a variance
5 8 or waiver. A person who acts in violation of the bill's
5 9 provisions is guilty of a county infraction or municipal
5 10 infraction and subject to civil penalties.

5 11 A county infraction or a municipal infraction is a civil
5 12 offense punishable by a civil penalty of not more than \$750
5 13 for a first violation or if the infraction is a repeat
5 14 offense, a civil penalty not to exceed \$1,000 for each repeat
5 15 offense.

5 16 The bill may include a state mandate as defined in Code
5 17 section 25B.3. The bill makes inapplicable Code section
5 18 25B.2, subsection 3, which would relieve a political
5 19 subdivision from complying with a state mandate if funding for
5 20 the cost of the state mandate is not provided or specified.
5 21 Therefore, political subdivisions are required to comply with
5 22 any state mandate included in the bill.

5 23 LSB 6302YC 80

5 24 da/gg/14